
Appeal Decision

Hearing held on 14 December 2016

Site visit made on 14 December 2016

by Jonathan Hockley BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 January 2017

Appeal Ref: APP/D0840/W/16/3153920

Hay Nurseries, Road through Hay, St Austell PL26 7LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Crowle against the decision of Cornwall Council.
 - The application Ref PA16/00699, dated 22 January 2016, was refused by notice dated 18 March 2016.
 - The application sought planning permission for the erection of a bungalow without complying with a condition attached to planning permission Ref CS/SAR/69/35639, dated 25 August 1969.
 - The condition in dispute is No 5 which states that: 'The occupation of the dwelling shall be limited to a person employed, or last employed in agriculture as defined in Section 221 (1) of the Town and Country Planning Act, 1962 or forestry, or a dependent of such a person residing with him (but including and widow or widower of such a person'.
 - The reason given for the condition is: 'The site is within a rural area in which it is intended to provide primarily for agriculture'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was refused on the basis of Policies 68, 69 and 76 of the Restormel Local Plan 2001. Since the time of this decision, the Cornwall Local Plan¹ (the Local Plan) has been adopted. In this case the Local Plan has superseded all the previous policies listed on the decision notice. This change occurred before the Hearing was held and both parties had the chance to consider this change during the Hearing.

Background and Main Issue

3. The appeal site, known as the bungalow at Hay Nurseries comprises an 'L' shaped building. The bungalow has a separate vehicular access to the nursery, but has an open boundary on the side to allow easy access to the nursery, which forms the southern and eastern boundaries to the bungalow.
4. Hay is a small hamlet of some 14 dwellings² which lies just over a mile from the village of St Stephen and around 5 miles from the larger town of St Austell.

¹ Cornwall Local Plan Strategic Policies 2010-2030, November 2016.

² Signed Statement of Common Ground, 14/12/16 – as submitted at the Hearing (Document 1)

The Nurseries were believed to have been established in the 1950s. In 1969 permission was granted for the bungalow, and shortly afterwards the property was constructed. The larger nursery site was then split in two and was sold off separately, forming Hay Nurseries, and Matts Nursery to the west.

5. The consent for the bungalow included a condition to ensure that the dwelling was occupied by a person employed in agriculture or forestry, or a dependent of such a person. The appellants have lived in the property since 1986 and have since ran the nursery business along with their son.
6. The appellants now wish to remove the condition to potentially help release some equity from the property to help pay for their retirement. The Council are of the view that the removal of the condition is not necessary as the condition remains relevant for the appellant and allows residence in retirement, and that the removal of the condition would take away a property from the agricultural housing stock of the County. The appellants consider that given the age of the condition, its successful use over the history of the bungalow, the changing nature of the demand for such properties and the future of the horticultural business, such a condition is no longer necessary.
7. The main issue in this case therefore is whether the dwelling could continue to play a role in supporting the rural economy.

Reasons

8. The planning system serves to heavily restrict new isolated housing in the countryside, except in special circumstances such as the essential need for a rural worker to live permanently at or near the place of their work. This is embodied within paragraph 55 of the National Planning Policy Framework (the Framework), and within the development plan, in Policy 7 of the Local Plan.
9. The appellant is of the view that the dwelling is no longer an isolated unit, but an integral part of a much larger group of residential properties, in part due to the effect of consents issued by the Council since the appeal site was constructed. However, the evidence states that there are only 14 dwellings within Hay, the majority of which predate the appeal site. Whilst I note that the pattern of development in Cornwall is often based around small clusters of villages, the diminutive size of Hay itself, its clear separation from the much larger village of St Stephen, and the fact that there is no clear pattern of development to the hamlet, other than a loosely linear one, means that I consider the site to be functionally isolated and located in the open countryside. I also consider that the surrounding area is rural and the site is within the agricultural landscape, a view that I note I share with the statement of common ground. It is clear therefore that a new dwelling on the site would be unlikely to be permitted unless it met the special circumstances listed in Local Plan Policy 7. The removal of the condition would in effect provide a new open market dwelling in a rural location.
10. It is clear that changes in agricultural practice and technology can alter the need for a permanent presence on a site, and that is partially the case presented here. Whereas at the time of the permission the Council were satisfied that there was a need for a permanent full time worker on the site of the (previously larger) nursery, changes in technology discussed at the Hearing and visible at the site, such as automatic watering and heating systems, alarms

and closed circuit television means that the appellant's son is able to run the nursery from his family home in St Stephen.

11. I also note the view that the tie is over 46 years old and has effectively served its purpose. However, in such cases it is reasonable to consider whether the tie can carry on working – whether the dwelling would be suitable for a different agricultural or forestry based worker, who works in the wider area.
12. The appellant produces some useful evidence concerning the number of people living in the County who work in agriculture or forestry, concluding that there are likely to be under 10,000 such people, and that the overall number is falling. I can appreciate that due to a range of factors such as farm conglomeration and increasing mechanisation that the number of those employed locally are falling in such industries, and the appellant added to this evidence during the Hearing with their in depth knowledge of the specific local situation. This results in fewer people in the County who would be applicable to live in the Cottage.
13. A local estate agent³ has produced two separate valuations for the bungalow, considering that the cottage is worth around £190,000 as it is at present, and around £270,000 with the agricultural tie removed. The Council does not dispute these figures and I see no reason to disagree. Evidence has also been submitted regarding the salary of the average agricultural worker in Cornwall, with estimates of an annual salary of between £15,600 and £17,100. The appellant considers that on such wages it would be extremely difficult to find a mortgage to raise the required money to purchase the bungalow. Similar restrictions would apply to renting the house. The estate agent report states that they consider the agricultural occupancy tie greatly restricts demand for the property, and that they consider they would be unlikely to find a buyer for the property at the time of the report.
14. However, whilst I note and place moderate weight on this evidence, this remains a largely paper exercise which takes little account of the personal circumstances of individual potential purchasers and remains therefore to a certain degree hypothetical. Around 10,000 people is still a significant number of people residing in the County area who *could* be eligible for the property.
15. To overcome this issue, it is often normal for appellants to market the property for sale or rent for at least a year. It was put to me in the Hearing that there is no need for such marketing, due to the information provided above. However, extensive marketing would move the exercise away from a paper based one to a more practical exercise.
16. Such marketing has not taken place. Evidence is submitted which states that marketing occurred around 2004-2005; however, and notwithstanding the age of this exercise, this marketing placed the whole business on the market – i.e. the nursery and the cottage, as opposed to merely selling the house with an agricultural tie. Such an offering would have likely had a smaller potential market than that which may exist for just the bungalow alone. Furthermore from the evidence produced, whilst the price the site was offered at was reduced during the period, it appears that the estate agent's suggested asking price of less than £400,00 was not taken on board. I therefore place little weight on this evidence.

³ Jefferys, 28/04/16

17. The appellants seek merely to release equity from their property to pay for their retirement. At the Hearing it was suggested that it would be morally wrong to commercially market the property if the appellants did not wish to sell. I have considered this argument carefully. However, there is no guarantee that the wishes of the appellant may not change – if a realistic offer came in it may be worth their while to accept the offer and perhaps move somewhere more sustainably located. In the absence of any alternative, marketing is also the only real practical way of demonstrating whether or not actual demand exists for the agricultural and forestry tied property.
18. It was also put to me that the appellant has restricted means and may not be able to afford to market their house. Whilst I am sympathetic with this I note that estate agent fees are normally chargeable upon the sale of the property and other options are also available online. I also agree that planning conditions restricting occupancy should not necessarily be retained once they have outlived their usefulness; however, without up to date marketing information I am unable to conclude that in this case the condition has outlived its usefulness.
19. My attention was drawn at the Hearing to a recent grant of consent to remove a similar condition from a house near Nanstallon⁴. However, critically in this case, the Officer's delegated report states that the property was extensively marketed for over a year and that whilst there was some interest from potential purchasers, either an agreement to sell was not reached or the potential purchasers would not have complied with the condition. This case therefore differs from the one before in terms of the up to date extensive marketing of the property.
20. Therefore, in the absence of any such up to date marketing of the property at a realistic price, I do not consider that it is possible for me to conclude that the dwelling could not continue to play a role in supporting the rural economy. The removal of the condition, by the effective creation of a new open market dwelling in the countryside would be contrary to Policy 7 of the local plan and to the Framework.

Other matters

21. I note the statements that the appellant has put their money into the business, as opposed to into savings, and the evidence that this has helped sustain and maintain the business, generating a certain amount of local employment and providing a sustainable business for the appellant's son. On my site visit I was shown some of the investment into the business, in the form of polytunnels, various machinery and security & technological devices. I have no doubt that the appellants have worked hard and continue to work hard to secure the business. However, with the acknowledgement that the bungalow is no longer required to serve the nursery directly, it is reasonable to consider whether the house could continue to serve the wider agricultural community.
22. At the Hearing and on the site visit I was directed to nearby housing in the same hamlet which does not have agricultural ties. I also heard evidence relating to the difficulties that the Council have on enforcing such ties. However, I noted that many of the properties with no ties predated the

⁴ Documents submitted at the Hearing, Nos 2, 3, and 4.

construction of the appeal site or were barn conversions. Moreover, each case must be considered on its own merits.

23. The appellant notes that the Council seek to preserve the stock of agriculturally tied dwellings in the County but that they do not know how many there are. However, the number of such dwellings to my mind is not the critical issue; the key issue is whether such dwellings which do exist continue to play a role in supporting the rural economy. In the absence of the marketing information in this case, I am unable to conclude that the appeal site cannot do so.
24. Other examples of cases have been referred to in the evidence. However, in the Aylesbury Vale case it appears that the matter revolved around the provision of a new agriculturally tied dwelling, with the Hyndburn Borough case appearing to consider a substantial farmhouse in a significantly different part of the country. I do not consider therefore that either case constitutes a precedent for this appeal. The appellant also considers that the Aylesbury Vale case could mean that they could make a strong case for a further dwelling on the site for their son, should they wish to do so and that such a dwelling would have a greater impact on the environment. Any such application would need to be considered by the Council on its own merits.

Conclusion

25. I have considerable sympathy with the appellants, who have clearly worked hard in establishing a sustainable business. Their evidence at the Hearing was honestly and sincerely given. However, based on the sum of all the evidence provided I cannot conclude that the bungalow could not continue to play a role in supporting the rural economy. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jon Hockley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Crowle

Appellant

Alan Leather DIP ARCH RIBA

Alan Leather Associates

FOR THE LOCAL PLANNING AUTHORITY

James Holman MRICS MRTPI FAAV

Cornwall Council

Rosilyn Baker

Cornwall Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Signed Statement of Common Ground, dated 14/12/16.
2. Decision Notice PA16/09307, Removal of Condition 6 (Agricultural Occupancy Condition) of Planning Application No. 6/88/0622/OOP dated 4/07/88 at Poachers Pocket, Cotton Woods, Nanstallon, Bodmin, Cornwall.
3. Officer delegated report for PA16/09307 [2].
4. Supporting Statement for PA16/09307 [2].